

E-filed 7/7/06

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

PHASE FORWARD INCORPORATED,
a Delaware Corporation,

Plaintiff,
vs.
MARY NOEL ADAMS, individually and
d/b/a PHASE FORWARD,

Defendant.

Case No.: C 05-4232 JF (HRL)

**APPLICATION, STIPULATION,
DECLARATION AND [PROPOSED]
ORDER EXTENDING DISCOVERY AND
MOTION CUT OFF DATES**

APPLICATION

Pursuant to Civil Local Rule 6-2, plaintiff Phase Forward Incorporated and defendant Mary Noel Adams (hereinafter, the “Parties”), by and through their respective counsel, hereby request that the Court amend the existing Scheduling Order adopted on June 2, 2006, and extend by 30 days (1) the date on which discovery in this action is to be completed; (2) the last day for the parties to file expert reports; (3) the last day for the parties to file rebuttal expert reports; (4)

the date on which expert discovery will close; (5) the last day for the filing of motions for summary judgment or partial summary judgment; and (6) the date set for motion hearing.

DECLARATION

I, LAURA THOMPSON, declare as follows:

1. I am an attorney duly admitted to practice law in the state of California. I have personal knowledge of the facts set forth herein, unless otherwise indicated, and if called as a witness could and would so testify.

2. On June 2, 2006, the Court adopted the Parties' discovery schedule proposed in its stipulated motion to extend discovery dates by 30-days, and issued an Order re-setting the motion hearing date, as follows:

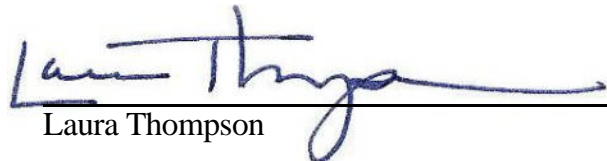
Task/Action	Adopted Schedule
Close of Fact Discovery	July 3, 2006
Last Day to File Expert Reports	August 1, 2006
Last Day to File Rebuttal Expert Reports	August 31, 2006
Close of Expert Discovery	October 31, 2006
Motion Hearing Date	January 19, 2007 at 9 a.m.

3. The Parties identified and conferred about deposition scheduling early in the discovery schedule, but have experienced ongoing difficulties coordinating counsel and witness availability despite diligent efforts. Defendant has yet to depose Plaintiff's Rule 26(a) witnesses, namely, Robert K. Weiler, Paul Bleicher, Ari Buchler, William Porter, Steve Powell and Lynette Herscha. Matthew Stavish (Defendant's lead attorney) is informed that Kelly Tillery (Plaintiff's counsel) is available to attend these depositions is the week of July 17, 2006, earliest, and that Plaintiff has asked his client to provide dates/times starting that week in which these witnesses will be available. Observing the July 3, 2006 discovery cut-off and Civil Local Rule 26-2, the Parties agreed to a further 30-day discovery extension so that Defendant is afforded the

1 opportunity to depose the witnesses identified, and provide both Parties the time needed to
2 complete their factual investigations.

3 4. Due to the extended weekend afforded the July 4th holiday, and July 3rd office closures, I
4 was unable to reach Plaintiff's counsel of record or person of similar authority to formally
5 execute this stipulated motion. However, I have been informed of the Parties' agreement as set
6 forth in this Declaration, and so signed and timely filed to carry out our mutual intent.

7 I declare under penalty of perjury under the laws of the United States that the foregoing is
8 true and correct to the best of my knowledge, and that this Declaration was executed at San
9 Francisco, California, on this 3rd day of July, 2006.

10 
11 Laura Thompson
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13 STIPULATION

14 For the reasons set forth above, the Parties stipulate to a 30 day extension of the
15 discovery and motion cut-off dates adopted by the Court on June 2, 2006, and June 5, 2006,
16 respectively, and jointly request that this Court approve the following modified schedule:

17 Task/Action	Adopted Schedule	Modified Schedule
18 Close of Fact Discovery	July 3, 2006	August 2, 2006
19 Last Day to File Expert Reports	August 1, 2006	September 1, 2006
20 Last Day to File Rebuttal Expert reports	August 31, 2006	October 2, 2006
21 Close of Expert Discovery	October 31, 2006	November 30, 2006
22 Last day to File Motions for Summary 23 Judgment and Partial Summary Judgment	December 1, 2006	January 2, 2007
24 Motion Hearing Date	January 19, 2007 at 9 a.m.	30 day extension, in deference to the Court's calendar

1 Dated: July 3, 2006

LAURA THOMPSON, ESQ.

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3 By: /s/Laura Thompson

4 Laura Thompson
5 Attorney for Defendant
6 MARY NOEL ADAMS

7 Dated: July __, 2006

PHILLIPS, ERLEWINE & GIVEN LLP

8 By: /s/

9 Spencer Martinez
10 Attorneys for Plaintiff
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ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

July 7, 2006


United States District Court Judge
Judge Jeremy Fogel